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<p>1 additional information in the case, then I may or may</p> <p>2 not formulate additional opinions. But as of today</p> <p>3 what you have is current.</p> <p>4 Q Other than Wal-Mart's attorneys, did you consult with</p> <p>5 anyone else about this case?</p> <p>6 A No.</p> <p>7 Q At any point in your work in this case, have you</p> <p>8 reviewed any of the performance evaluations of Marlo</p> <p>9 Spaeth?</p> <p>10 A I don't recall.</p> <p>11 Q And that sounds like you may have, but you can't</p> <p>12 certainly say that you did, right?</p> <p>13 A I reviewed a tremendous amount of documents in the</p> <p>14 case, so I can't tell you that I -- that I did or did</p> <p>15 not. I don't recall.</p> <p>16 Q If Marlo Spaeth had a long history of positive</p> <p>17 performance evaluations, that is something you do not</p> <p>18 have knowledge of; is that correct?</p> <p>19 MR. BULIOX: I'm sorry, can you repeat the</p> <p>20 question?</p> <p>21 (Previous question read by the reporter.)</p> <p>22 MR. BULIOX: Okay. I would just object to</p> <p>23 form and to the extent it's been asked and answered</p> <p>24 already, but subject to that you can go ahead and</p> <p>25 answer it if you can.</p>	<p>1 that you first appeared on the Thomson Reuters list?</p> <p>2 A Yes, maybe mid to late 2017.</p> <p>3 Q Thank you. What did you understand your engagement</p> <p>4 to be?</p> <p>5 A Boy, that's a hard question. I understood that my</p> <p>6 engagement in this case was to provide objective</p> <p>7 information to the counsel for Wal-Mart specifically</p> <p>8 regarding Ms. Spaeth's current cognitive functioning</p> <p>9 as well as her level of cognitive functioning when</p> <p>10 she was released from Wal-Mart.</p> <p>11 Q And when you were corresponding with Thomson Reuters,</p> <p>12 did you have knowledge that Marlo Spaeth is a woman</p> <p>13 who has Down syndrome at that time?</p> <p>14 MR. BULIOX: Objection as to form. Are you</p> <p>15 saying when he was contracting with Thomson Reuters</p> <p>16 in the very beginning two years ago, or are you</p> <p>17 saying in connection with this case?</p> <p>18 BY MS. VANCE:</p> <p>19 Q In connection with this case.</p> <p>20 A I believe so. I believe they contacted me and</p> <p>21 asked -- I believe they asked me what my experience</p> <p>22 was with Down syndrome.</p> <p>23 Q What is your experience with Down syndrome?</p> <p>24 A Well, I have evaluated individuals with Down syndrome</p> <p>25 and provided clinical treatment services to</p>
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<p>1 THE WITNESS: I understand from the</p> <p>2 material that I reviewed that she was -- she had a</p> <p>3 long history of pretty good performance. I don't</p> <p>4 recall a lot of details of it, but I do recall that</p> <p>5 she had a history of positive performance.</p> <p>6 BY MS. VANCE:</p> <p>7 Q Have you been retained directly by Wal-Mart in this</p> <p>8 case or by Wal-Mart's law firm or by another entity?</p> <p>9 A I was retained -- the way that I got into this case</p> <p>10 was through Thomson, T-H-O-M-S-O-N, Reuters,</p> <p>11 R-E-U-T-E-R-S. They have a professional referral</p> <p>12 service, so they are people that kind of got ahold of</p> <p>13 me on this case.</p> <p>14 Q And Thomson Reuters is a service that maintains lists</p> <p>15 of area expert witnesses; is that correct?</p> <p>16 A That's my understanding.</p> <p>17 Q And how long do you believe you have been listed as</p> <p>18 an expert available for hire through the service,</p> <p>19 Thomson Reuters?</p> <p>20 A This was the first time that I received a case from</p> <p>21 them, so a year or two.</p> <p>22 Q Are there any other similar services that list you as</p> <p>23 an available expert witness?</p> <p>24 A Not to my knowledge.</p> <p>25 Q And I'm sorry, you said a year or two, maybe 2017</p>	<p>1 individuals with Down syndrome.</p> <p>2 Q I'll focus on your statement that you have evaluated</p> <p>3 individuals with Down syndrome. In what capacity</p> <p>4 have you evaluated individuals with Down syndrome?</p> <p>5 A Primarily in a clinical capacity. For many years I</p> <p>6 worked for Michael Reese Hospital in Chicago in what</p> <p>7 was then called the Dysfunctional Child Center --</p> <p>8 not a very good name. They changed it to the</p> <p>9 Developmental Institute later, thank goodness.</p> <p>10 However, I worked at the Developmental --</p> <p>11 or the Dysfunctional Child Center doing evaluations</p> <p>12 of multihandicapped children and adults in</p> <p>13 conjunction with the genetics department at the</p> <p>14 hospital. So I would evaluate children and young</p> <p>15 adults with multiple handicaps including frequently</p> <p>16 Down syndrome.</p> <p>17 And then my job as part of the</p> <p>18 multidisciplinary team was to represent the hospital</p> <p>19 and our -- our evaluation results primarily in school</p> <p>20 hearings related to either Section 504 of the</p> <p>21 Rehabilitation Act or the special education laws for</p> <p>22 both the state of Illinois and the federal</p> <p>23 government.</p> <p>24 Q Did you render professional opinions in the school</p> <p>25 hearings?</p>

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1	individuals that were seeking either accommodations	1	Q And what is that?
2	or -- for employers that were concerned that	2	A I've been involved in consultation and often
3	individuals may need accommodations, so I perform	3	following evaluations with individuals who have
4	evaluations and consultation.	4	dementia as part of a treatment team or a
5	Q And what companies have you performed consultations	5	consultation team. I've provided input into
6	like that for?	6	treatment programming.
7	A They're generally private employers, although I	7	Q And for -- as a psychologist presumably, correct?
8	did -- if I recall correctly, there was a	8	A Yes.
9	municipality in Walworth County that I did some	9	Q And how many situations would you estimate you've
10	consultation and evaluation on.	10	been involved in as a psychologist in treatment for a
11	Q On approximately how many cases would you estimate	11	patient with any form of dementia?
12	you've served in that capacity?	12	A As a treatment provider or as providing consultation
13	A I don't recall exactly, but it's probably five or	13	and input? Those are two separate questions.
14	fewer.	14	Q Right, thank you. So let's separate. Have you ever
15	Q Five or fewer. And to be clear, in none of those	15	been the treatment provider for a patient who has any
16	situations did the worker in question have Down	16	form of dementia?
17	syndrome, correct?	17	A I generally don't treat adults so -- I'm a child
18	A We're talking about consultation to employers,	18	psychologist by training. So it would be very
19	correct?	19	unlikely that I would have -- and I don't recall a
20	Q Correct.	20	specific case where I would have been involved in
21	A Under ADA?	21	treatment programming, providing direct treatment
22	Q The five or fewer that you've testified about.	22	services for a person with dementia.
23	A Yes, I don't believe any of those individuals had	23	Q And then the other capacity you indicated where you
24	Down syndrome.	24	do have some clinical experience is in the
25	Q Do you have any professional or clinical experience	25	consultation?
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1	working with people who have disabilities to set	1	A Yes.
2	up -- I'm sorry. I think your prior testimony you	2	Q How many instances would you estimate you have been
3	answered that. I'll withdraw the question.	3	involved clinically as a consultant in the treatment
4	Do you have any professional training in	4	of any form of dementia?
5	the medical treatment of Alzheimer's?	5	A That's very difficult to say because I don't keep
6	A No.	6	track of specific types of cases. But there have
7	Q Do you have any professional or clinical experience	7	been many different cases in which I have provided
8	in the medical treatment of Alzheimer's?	8	consultation and been involved as part of the
9	A I've worked with a number of individuals as part of	9	treatment team for individuals who have had dementia.
10	evaluation and consultation who have had Alzheimer's	10	Q If you've been involved in the treatment team for a
11	or other forms of dementia. I've been involved in	11	client or a patient with dementia -- you said many
12	cases, so I'm not sure if that's the kind of	12	times. Would you say over ten times that --
13	experience you're looking for or not.	13	A Yes.
14	Q No, I'd be looking for the medical management of a	14	Q -- you've served in that capacity? Have you served
15	patient with Alzheimer's.	15	in that capacity over 20 times?
16	A Because I'm not a physician, I don't prescribe	16	A Yes.
17	medication, so if we are isolating everything medical	17	Q Have you served in that capacity over 50 times?
18	management, the answer is going to be no.	18	A I believe so.
19	Q Is it also true you do not have any professional	19	Q And is there a typical course of treatment that you
20	training in the medical treatment of any form of	20	recommend for a client with dementia?
21	dementia?	21	A Not necessarily. Each client is an individual in and
22	A Correct.	22	of themselves, but typically a treatment program
23	Q Do you have any clinical experience in the treatment	23	would include medical evaluation and treatment. It
24	of any form of dementia?	24	would include psychological evaluation and treatment.
25	A Yes.	25	It would include social work case management

<p style="text-align: right;">Page 46</p> <p>1 evaluation and services, and it would include family 2 support services. 3 Q And your role on the team would be with the 4 psychological evaluation and treatment part; is that 5 correct? 6 A Well, it depends on -- it depends on the setting. So 7 my role in various treatment settings might be 8 limited to the psychological portion, but it might 9 also be related to the overall provision of services 10 and the coordination of services among different 11 professionals. It just depends on the particular 12 setting that I was in at the time. 13 Q Would the medical evaluation and treatment portion 14 or -- yeah, portion of the teams you're describing be 15 performed by a person with an M.D. degree? 16 A An M.D. or a D.O., a licensed physician. 17 Q And to your memory have any of the clients or -- have 18 any of the cases in which you've been on a team for 19 the treatment of a person with some form of dementia 20 focused on a client who had Down syndrome as well as 21 a form of dementia? 22 A I don't remember a specific case. 23 Q I'm going to ask you to review Exhibit 126, your 24 curriculum vitae, and tell me if there are any 25 updates.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q Do you know whether -- any case you did in February 2 was civil or criminal? 3 A Not without looking. I have that information if 4 you'd like me to look. It will just take a sec. 5 Q Yeah, why don't you let me know if it was civil or 6 criminal, or if you have the name of the case that 7 would be the best. 8 A I can do both assuming I can get a connection. 9 Q Oh, you can't get a connection. 10 A I can't? 11 Q Not at the EEOC. 12 A You never know. 13 (Discussion held off the record.) 14 THE WITNESS: You said February -- actually 15 let me just look at my Rule 26 list here. 16 (Exhibit 127 marked for identification.) 17 THE WITNESS: In February, that was 18 February 14 or February 26? 19 BY MS. VANCE: 20 Q I think 26 was the date I was looking at. 21 A February 26 I was involved in a Daubert hearing, 22 18CF242 Ozaukee County criminal case. State v. 23 Steiner, S-T-E-I-N-E-R, hyphen VanBuren, capital V 24 A-N, capital B-U-R-E-N. 25 Q That was a criminal. What about the February 14?</p>
<p style="text-align: right;">Page 47</p> <p>1 A I can answer that now. There are updates. And I 2 brought with me today I think two copies of my 3 current, updated CV that will have the revision date 4 on the bottom of page one of February of 2019. 5 Q All right. Is that being copied currently? 6 A Yes. 7 Q So we will exhibit that later. I believe the -- one 8 of the reasons we're scheduled for today is because 9 another possible date I asked for was a date you were 10 in court testifying. Is -- do you know what case 11 that was on in February? 12 A I have no idea. 13 Q But to the best of your knowledge, would that 14 February case that you testified on be in the updated 15 curriculum vitae? 16 A No, that would be on my Rule 26 list. 17 Q Okay. Which is Exhibit 125? 18 A Yes, although note that the Rule 26 list that you 19 have is dated December 14 of 2018 and it's now the 20 end of March, so that's updated on a regular basis. 21 Q All right. So I guess I would ask for the most 22 recent, because I have reason to believe you were in 23 court in February, because I wanted to depose you a 24 day that you were supposed to be in court. 25 A I'm sorry, you know how judges are.</p>	<p style="text-align: right;">Page 49</p> <p>1 A State v. Santiago 17CF2577, Milwaukee County 2 criminal. 3 Q Were you court appointed in either of those cases? 4 A No, in both of those cases I was retained by the 5 defense. 6 Q And were those cases involving child testimony of 7 victimization of some sort? 8 A Those cases were both child forensic interview 9 reviews. 10 Q And the felony allegations against the criminal 11 defendant were of felony -- I don't want to say 12 assault, because it's going to be broader than 13 that -- felonious conduct against the children you 14 interviewed? 15 A Yes. Not the children I interviewed, the children 16 who were the alleged victims. I did not interview 17 the children. 18 Q Thank you. All right. Now, I'd like to direct your 19 attention to an exhibit we just had marked as Exhibit 20 127. 21 When I look at the last sentence going to 22 the second page, I see that when you evaluated Marlo 23 Spaeth on June 1, 2018, you conducted a [REDACTED] 24 [REDACTED] that was completed by Amy Jo 25 Stevenson, correct?</p>

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<p>1 that in part because patients with [REDACTED] can have 2 very high scores and perfect scores in some cases on 3 this [REDACTED]. 4 A That's not the reason I put that in there. I put 5 that in there because she had -- when I did this, she 6 had a diagnosis of [REDACTED]. 7 Q From where? 8 A From her medical records from the APMP, Ms. Kaminsky. 9 Q That was [REDACTED] was the diagnosis. 10 A It actually said [REDACTED] in the records that I 11 reviewed. So I'm looking at a person in front of me 12 who has a diagnosis of [REDACTED] although I do -- I 13 will tell you that Dr. Smith disputed that of course, 14 so that was one of the things I was looking at. 15 And as you know, in my report I believe I 16 said that Ms. -- that she had [REDACTED]. 17 [REDACTED] So I'm 18 seeing signs of [REDACTED] here as well. So what I 19 needed to know then was her performance on the [REDACTED] 20 simply a performance of [REDACTED] she's getting a 21 little lower score because of [REDACTED] or are there 22 other factors in play. 23 In this particular case I felt that her 24 scores were lower than I would expect even given the 25 diagnosis of [REDACTED] That's why I put that in</p>	<p>1 documentation from Dr. Kaminsky. 2 Q Nurse practitioner Kaminsky? 3 A I'm sorry, APNP. 4 Q And I want to say it's Annette. Does that sound 5 right to you? 6 A It could be. 7 Q And it sounds to me like you had no conversation with 8 Ms. Kaminsky at any point, correct? 9 A You are correct. 10 Q You had no conversation with Ms. Stevenson, the 11 sister of Marlo Spaeth, at any point concerning that 12 evaluation, clinical evaluation, correct? 13 A The only conversations I had with Amy Jo Stevenson 14 were conducted in June when I met with her. And I'm 15 looking at my notes which are Bates stamped D001110 16 and subsequent. 17 Q In which exhibit, please? 18 A 128. These are my handwritten notes at the time that 19 I met with Ms. Spaeth. And as you recall, I met with 20 Amy Jo during the beginning of that to get some 21 background information. And I asked about history, 22 and I'm just looking at my notes to see if she 23 mentioned the [REDACTED] diagnosis or the medication 24 that she had taken. And the answer is no, she did 25 not mention her history of taking medication or</p>
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<p>1 there. 2 Q Because as the test manual indicates, people with 3 [REDACTED] can still have perfect scores? 4 A I'm not sure if the test manual said they can have 5 perfect scores. There's probably some perfect scores 6 in there. 7 Q 50 is a perfect score, right? 8 A Yeah, 50 is a perfect score. But generally people 9 with [REDACTED] will score a little bit lower on the 10 [REDACTED] than people without [REDACTED]. 11 Q And then I want to direct your attention to the 12 reliance you place on the review of Ms. Kaminsky's 13 medical records. If we look at Bates stamp D002049, 14 on the fourth full paragraph you write, In the 15 current case I have limited information concerning 16 Ms. Spaeth's functioning in July 2012. The 17 information that I have, however, indicates that an 18 unidentified clinician evaluated her and determined 19 that she was experiencing [REDACTED] Details of that 20 evaluation were not available to me. 21 A Oh, July 2015 is what I should have said. I think I 22 misspoke there. 23 Q Did you make any inquiry with anyone about how the 24 evaluation of Ms. Spaeth was conducted? 25 A I reviewed the records and looked at the</p>	<p>1 [REDACTED] difficulties or her discussion with Nurse 2 Practitioner Kaminsky about it. 3 Q All right. And if you found out that Ms. Spaeth was 4 evaluated with a [REDACTED] test but had higher scores than 5 the scores she had with you, would that in any way 6 affect your opinion? 7 A Well, it might. I would like to -- in that case I 8 would want to see the [REDACTED] scores and see copies of 9 the information that is part of that test record, and 10 I would want to compare them and see -- you know, see 11 what the differences or the similarities were. 12 Q And if she had a score that was lower, would that 13 affect your opinion? 14 A It might depend on how much lower it was and what 15 areas it was lower. 16 Q If the clinical evaluation consisted of a five-minute 17 phone call between Ms. Stevenson and Ms. Kaminsky 18 with reports of [REDACTED] would that affect your 19 opinion in this case? 20 MR. BULIOX: Objection, form, calls for 21 speculation. Subject to that if you can answer, go 22 ahead. 23 THE WITNESS: Well, I'm aware that -- and 24 the answer is I'm not sure. I know that -- because I 25 subsequently was able to see records from Nurse</p>

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<p>1 it falls within about the first percentile.</p> <p>2 So there's a huge difference when you -- if</p> <p>3 she was not experiencing in this case attention</p> <p>4 problems, you would expect that percentile range to</p> <p>5 be around 50, and instead it's around one so -- and</p> <p>6 that's compared to the normative sample, the age</p> <p>7 group that Dr. Smith references that she would be</p> <p>8 more of a valid comparison.</p> <p>9 So what I'm saying with this Appendix C is</p> <p>10 essentially it doesn't matter if you consider that</p> <p>11 she may be aging at a rate significantly faster than</p> <p>12 a person in the normal population, she still is very</p> <p>13 consistent with individuals with [REDACTED] and is</p> <p>14 not consistent with persons of that older</p> <p>15 chronological age.</p> <p>16 Q Are her scores consistent with being a person who has</p> <p>17 Down syndrome who does not have [REDACTED]?</p> <p>18 A Her scores are not consistent with being a person</p> <p>19 that does not have [REDACTED]. Regardless of whether</p> <p>20 she has Down syndrome or not, her scores are not</p> <p>21 consistent with a person who doesn't have [REDACTED].</p> <p>22 Q So is -- to your knowledge is there research about</p> <p>23 how a person who has [REDACTED] but -- I'm sorry, who</p> <p>24 has Down syndrome but does not have [REDACTED] would</p> <p>25 typically score on the [REDACTED]?</p>	<p>1 magnitude.</p> <p>2 Q And for the [REDACTED], do depression symptoms affect</p> <p>3 people's performance?</p> <p>4 A They could potentially, yes.</p> <p>5 Q And you write that Dr. Smith opined that the</p> <p>6 [REDACTED] -- I'm on 2049, last paragraph. Dr. Smith</p> <p>7 opined that the [REDACTED] that was earlier diagnosed</p> <p>8 for Ms. Spaeth may have been [REDACTED] that</p> <p>9 results from anxiety and depression. While that is</p> <p>10 clearly a possibility, it is not consistent with the</p> <p>11 data available to me.</p> <p>12 And I wanted to ask you why do you write</p> <p>13 that that is clearly a possibility?</p> <p>14 A Well, because we know that a person that is</p> <p>15 experiencing severe anxiety or depression could also</p> <p>16 then have problems with memory and attention and</p> <p>17 motivation. Those symptoms can co-occur.</p> <p>18 Q And do you think it's possible that the depressive</p> <p>19 symptoms for a person with Down syndrome that do</p> <p>20 manifest -- well, strike that.</p> <p>21 I'll withdraw the question.</p> <p>22 Turning to 2050 on the next page, you noted</p> <p>23 that Ms. Spaeth's scores on the [REDACTED] have not declined</p> <p>24 over the six-month period between your administration</p> <p>25 of the two tests, right?</p>
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<p>1 A I don't believe there's been any research that has</p> <p>2 looked at that.</p> <p>3 Q So what is your basis for saying that she -- I mean</p> <p>4 are you saying that she couldn't have gotten these</p> <p>5 scores on the [REDACTED] just because she</p> <p>6 has Down syndrome without [REDACTED]?</p> <p>7 MR. BULLOX: I'm going to object to form,</p> <p>8 but subject to that, if you understand the question,</p> <p>9 answer.</p> <p>10 THE WITNESS: I know many individuals with</p> <p>11 Down syndrome and without [REDACTED] and it is highly</p> <p>12 unlikely that a person with Down syndrome without</p> <p>13 [REDACTED] would score this low.</p> <p>14 BY MS. VANCE:</p> <p>15 Q Could poor effort be a possible explanation for</p> <p>16 scoring as low as Marlo Spaeth did on the [REDACTED]?</p> <p>17 A Although -- it could contribute to it. That is one</p> <p>18 of the things that I considered. It could contribute</p> <p>19 to it, but I don't believe that's the case in this</p> <p>20 particular situation.</p> <p>21 Q And could stress have contributed to lower scores on</p> <p>22 the [REDACTED] in Marlo Spaeth's case?</p> <p>23 A I think it's possible that stress could have</p> <p>24 contributed. Again I don't feel that stress would</p> <p>25 have been sufficient to result in scores of this</p>	<p>1 I'm looking for what paragraph you're on.</p> <p>2 Q The first full paragraph.</p> <p>3 A Yes, I see that. Yes.</p> <p>4 Q She was -- now, was her score overall higher the</p> <p>5 second time it was given? Looks like there was a</p> <p>6 total score of [REDACTED] in June but then a total score</p> <p>7 of -- total raw score of [REDACTED] in December.</p> <p>8 A You're correct.</p> <p>9 Q The second time she took it there was some</p> <p>10 improvement in her percentile that she ranked in,</p> <p>11 correct, in total score?</p> <p>12 A The second time --</p> <p>13 Q Right.</p> <p>14 A -- that she took it? No, her percentile range was</p> <p>15 below the first percentile in both -- in both test</p> <p>16 administrations unless you're referring to her -- the</p> <p>17 comparison with the [REDACTED] sample.</p> <p>18 Q That's the [REDACTED] percentile?</p> <p>19 A Yes, it is.</p> <p>20 Q So compared to the [REDACTED] sample, the first time</p> <p>21 you administered the test, she scored in what would</p> <p>22 have been consistent with the 38th percentile for</p> <p>23 people who have [REDACTED]?</p> <p>24 A Correct.</p> <p>25 Q The second time she beat out 8 percentile of those</p>

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<p>1 A That's one out of 50 potential questions, and many of 2 the others are a little more difficult for her. 3 Q The concept of being scheduled, the passive concept 4 of she has been scheduled, can you expect Marlo 5 Spaeth as the person who tested as she did with you 6 June 1 on the [REDACTED] to comprehend the concept of 7 being scheduled? 8 A Yes. 9 Q What about 'she is expected to work her scheduled 10 shift.' Is that within the reading comprehension 11 level she displayed in June of 2018 to you? 12 A I don't know for sure, but I don't think so. 13 Q What about the concept of a lack of customer service. 14 Is that within the reading comprehension that Marlo 15 Spaeth displayed to you in June of 2018? 16 A I didn't test that, but those would be words that I 17 think are probably above her comprehension level in 18 June of 2018. 19 Q And the -- do you have any knowledge of whether -- 20 you testified you don't have any knowledge of whether 21 a person's IQ score on the WAIS IV would decline due 22 to the onset of [REDACTED] Do you have any knowledge 23 of whether or not a person's WIAT III scores would 24 change over time given the onset of [REDACTED]? 25 MR. BULIOX: I'm going to object to the</p>	<p>1 back and look for more subjective data. 2 Q Which we don't have in this case, correct? 3 A I don't have it. 4 Q I see the sentence, Continued infractions will result 5 in the next level of coaching up to and including 6 termination. 7 Do you think continued infraction is within 8 the vocabulary that Marlo Spaeth demonstrated to you 9 in June of 2018? 10 A That term probably is not. 11 Q I also see 'The expiration date of the coaching may 12 be extended beyond December 23, 2015, date if the 13 associate spent time on LOA.' 14 Would you have read that sentence to Marlo 15 Spaeth in June of 2018 and expected her to comprehend 16 it after you had given her the [REDACTED] test? 17 A Not without an explanation. 18 Q And is that because there are difficult vocabulary 19 words or difficult concepts in that sentence? Why 20 does it require an explanation? 21 A Well, those are big words, and Marlo is a simple 22 person. So for example, on the back of this exhibit, 23 you'll notice under action plan, 'I will check my 24 schedule every day.' That's much simpler, much more 25 straightforward than the expiration date of the</p>
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<p>1 extent it mischaracterizes testimony. Subject to 2 that, go ahead and answer. 3 THE WITNESS: I don't know of any research 4 that has specifically addressed that. I think if you 5 think about what you're asking though, you're asking 6 an individual to recognize concepts and to understand 7 discourse. The onset of [REDACTED] could interfere 8 with those abilities, so it's possible that her 9 performance in 2018 would be worse than her abilities 10 would have been earlier, but I don't have 11 objective -- I don't know of a study that's looked at 12 that specifically. 13 BY MS. VANCE: 14 Q So if somebody tested with a second grade reading 15 level after they had [REDACTED] you have no knowledge 16 of whether or not they may have had a higher than 17 second grade reading level prior to [REDACTED] whether 18 or not we should expect that in the data? 19 A The test data that I had would not answer that 20 question. You would have to go back and look at 21 other abilities. So for example, in 2015 was she 22 capable of reading a bus schedule, was she capable of 23 making a grocery list and following it, was she 24 capable of following written instructions at a 25 particular level or not. So one would have to go</p>	<p>1 coaching. So I would expect her to understand the 'I 2 will check my schedule every day' and perhaps she 3 even said it, I don't know. Without an explanation 4 as opposed to the LOA sentence, that would be a 5 little difficult. 6 Q What about the vocabulary, 'a no-call/no-show absence 7 occurrence'? Actually let's look at that sentence. 8 A I'm not sure where -- 9 Q Sorry, I turned the page like you did. Sorry. So 10 let's get this sentence, She did not come to -- I'm 11 sorry -- 'She did not come in to work, nor did she 12 call in, so this is considered by policy to be a 13 no-call/no-show absence occurrence'. 14 MR. BULIOX: I'm sorry, where were you? 15 THE WITNESS: Right there. 16 BY MS. VANCE: 17 Q Is the word -- would you expect the word 'occurrence' 18 to be within Marlo Spaeth's vocabulary based on your 19 testing? 20 A No. 21 Q Would you expect the idea of her actions being 22 considered by policy something within her reading 23 comprehension based on your testing? 24 A No. 25 Q And the concept of a no-call/no-show absence, do you</p>

<p style="text-align: right;">Page 162</p> <p>1 think that's within the reading comprehension she</p> <p>2 displayed in your testing?</p> <p>3 A Probably not.</p> <p>4 Q What about an 'unsatisfactory shopping experience for</p> <p>5 the customer.' Would you expect Marlo Spaeth to have</p> <p>6 reading comprehension about an unsatisfactory</p> <p>7 shopping experience for the customer?</p> <p>8 A I think she would have difficulty reading that.</p> <p>9 Q What about translating the concept that something</p> <p>10 that leads to an unsatisfactory shopping experience</p> <p>11 for the customer may result in potential lost sales.</p> <p>12 Would you expect her to follow the logic of that</p> <p>13 phrase?</p> <p>14 A Not if you presented it to her just like that. I</p> <p>15 think you'd need to explain it to her.</p> <p>16 Q You wouldn't expect her to be able to read that</p> <p>17 sentence and comprehend it; is that right?</p> <p>18 A Not based on my testing.</p> <p>19 MR. BULIOX: Again, to be clear, we're</p> <p>20 talking about Dr. Thompson's testing as it related to</p> <p>21 his assessments in 2018, we're not talking about 2015</p> <p>22 or 2014. If we are talking about 2014, 2015, I would</p> <p>23 object to the form of the question as being vague and</p> <p>24 ambiguous.</p> <p>25 MS. VANCE: I think the record's clear.</p>	<p style="text-align: right;">Page 164</p> <p>1 A Yes.</p> <p>2 Q And that was in your testing, right?</p> <p>3 A Yes.</p> <p>4 Q And you also testified that at some point in time she</p> <p>5 developed [REDACTED] is that correct?</p> <p>6 A Yes.</p> <p>7 Q And how does that work, does it get worse over time?</p> <p>8 A [REDACTED] typically gets worse over time unless one</p> <p>9 takes medication to help slow down the progression.</p> <p>10 Q So one's ability to function declines over time; is</p> <p>11 that a fair assessment?</p> <p>12 A Yes.</p> <p>13 Q And is it fair to say that she would have been higher</p> <p>14 functioning when it came to her ability to adapt to</p> <p>15 change back in 2014, 2015?</p> <p>16 A I believe so.</p> <p>17 Q You indicated I think, and correct me if I'm wrong,</p> <p>18 earlier in your testimony that you did not speak to</p> <p>19 Amy Jo or the nurse practitioner to form an opinion</p> <p>20 regarding the possibility of Ms. Spaeth possibly</p> <p>21 having [REDACTED] is that right?</p> <p>22 A Correct.</p> <p>23 Q Why not?</p> <p>24 A Well, I had -- I was testing for that. I knew that</p> <p>25 there was documentation that she was having [REDACTED]</p>
<p style="text-align: right;">Page 163</p> <p>1 Q Am I right that you testified that typically you</p> <p>2 expect an IQ score to remain stable after age 10?</p> <p>3 A 10 to 12.</p> <p>4 Q After age 10 to 12 throughout life, correct?</p> <p>5 A Barring some additional insult or disease that</p> <p>6 affects it.</p> <p>7 Q The achievement testing however, does an adult's</p> <p>8 achievement top out at a certain age and then become</p> <p>9 stable?</p> <p>10 A No. Hopefully we're life-long learners. I'm sure</p> <p>11 all of us in this room are.</p> <p>12 MS. VANCE: I have no further questions at</p> <p>13 this time. It's 5:10.</p> <p>14 MR. BULIOX: Can we take a short break?</p> <p>15 MS. VANCE: Yes.</p> <p>16 (Recess taken from 5:11 to 5:17 p.m.)</p> <p>17 EXAMINATION</p> <p>18 BY MR. BULIOX:</p> <p>19 Q Dr. Thompson, you talked about Marlo's ability to</p> <p>20 adapt to change in your final assessment; is that</p> <p>21 right?</p> <p>22 A Yes.</p> <p>23 Q And you testified that she showed signs of having</p> <p>24 flexibility in connection with her routine. Did I</p> <p>25 hear that right?</p>	<p style="text-align: right;">Page 165</p> <p>1 [REDACTED] and the documentation included a diagnosis</p> <p>2 of [REDACTED] and so I was aware that that was an</p> <p>3 issue. So I was going to conduct standardized</p> <p>4 testing to look at that possibility.</p> <p>5 I could have talked with Amy Jo, but that</p> <p>6 would have required, first of all, additional time</p> <p>7 that I didn't have during the assessment. I was</p> <p>8 limited to two two-hour blocks. It would also -- it</p> <p>9 would have been Amy's subjective impressions in the</p> <p>10 middle of litigation, which would have been perhaps</p> <p>11 suspect because she had potential motivation to push</p> <p>12 me in one direction. And I didn't need to talk to</p> <p>13 the -- Ms. Kaminsky, Nurse Kaminsky, because she had</p> <p>14 already documented things in her record.</p> <p>15 Q You did in fact speak to Amy Jo at some point, right?</p> <p>16 A Yes, I did.</p> <p>17 Q That was during your assessment in June of 2018?</p> <p>18 A Yes.</p> <p>19 Q At one point in time you were asked about opinion 4A</p> <p>20 in your report which I believe was Exhibit 130. And</p> <p>21 if you look at the bottom, if you look at page 10 of</p> <p>22 18 --</p> <p>23 A Yes.</p> <p>24 Q -- this is what I'm referring to, so 4A, you see</p> <p>25 that?</p>

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<p>1 A 4A, yes.</p> <p>2 Q And you talked about external influences earlier</p> <p>3 today; is that right?</p> <p>4 A Yes.</p> <p>5 Q And you talked about at the onset of the individual</p> <p>6 portion of the June evaluation Ms. Spaeth</p> <p>7 spontaneously brought up her separation from</p> <p>8 employment at Wal-Mart, correct?</p> <p>9 A Correct.</p> <p>10 Q Could the external influence have been coaching or</p> <p>11 direction she received from Amy Jo or somebody else?</p> <p>12 A Certainly.</p> <p>13 Q Did her mention of her separation with employment</p> <p>14 have anything to do with any question you asked her?</p> <p>15 A No, it did not.</p> <p>16 Q There was discussion earlier today about Amy Jo and</p> <p>17 what her motivations were in connection with a report</p> <p>18 that she gave to Dr. Smith. Do you recall that?</p> <p>19 A Yes.</p> <p>20 Q And I think you had mentioned at one point that one</p> <p>21 of her motivations could have possibly been</p> <p>22 fabricating a report?</p> <p>23 A That's one possibility, yes.</p> <p>24 Q What if there was a period where Amy Jo represented</p> <p>25 that she was Marlo's guardian and she wasn't her</p>	<p>1 schedule every day?</p> <p>2 A Yes.</p> <p>3 Q If Marlo is the one that made this comment, what is</p> <p>4 your takeaway, if any, from that?</p> <p>5 A I would believe that she understood she needed to</p> <p>6 check her schedule on a daily basis and then follow</p> <p>7 the schedule.</p> <p>8 Q We've spent some time going over Dr. Smith's updated</p> <p>9 report. What do you think about his report?</p> <p>10 A I think that his report certainly raises questions</p> <p>11 about the presence of confirmatory bias.</p> <p>12 Q And what's confirmatory bias?</p> <p>13 A Situation where a person goes into a situation with a</p> <p>14 preconceived notion and then pays attention or gives</p> <p>15 increased credibility to things that will support</p> <p>16 their preconceived notion and pays less attention to</p> <p>17 or discounts the importance of information that might</p> <p>18 refute their preconceived notion.</p> <p>19 MR. BULIOX: That's all I have.</p> <p>20 EXAMINATION</p> <p>21 BY MS. VANCE:</p> <p>22 Q I do have some quick follow-up regarding this topic.</p> <p>23 You've testified about on redirect of Amy</p> <p>24 Jo Stevenson as an external factor including Marlo</p> <p>25 Spaeth and noting that Amy Jo, because the case is in</p>
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<p>1 guardian, but she represented that she was her</p> <p>2 guardian as part of her efforts to advance this case</p> <p>3 or claims against Wal-Mart. Would that be suggestive</p> <p>4 of any effort to you to fabricate for the sake of</p> <p>5 advancing the claims or issues against Wal-Mart?</p> <p>6 A It would certainly make me concerned about that, yes.</p> <p>7 Q I'm going to show you again Exhibit 20 if you can</p> <p>8 pull that out.</p> <p>9 MS. VANCE: It's an exhibit previously</p> <p>10 marked as Stern dep 20.</p> <p>11 BY MR. BULIOX:</p> <p>12 Q Okay, you were asked not too long ago about whether</p> <p>13 or not Marlo could comprehend from a reading</p> <p>14 comprehension standpoint several items in this</p> <p>15 exhibit, correct?</p> <p>16 A Correct.</p> <p>17 Q All right. Do you believe based on your assessment</p> <p>18 of Marlo in 2018 that if this was explained to her,</p> <p>19 that she would be able to understand the concepts in</p> <p>20 this document?</p> <p>21 A If it was explained to her, yes.</p> <p>22 Q And if you turn to -- I believe it's the second page.</p> <p>23 So at the bottom it says EEOC00460. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Under action plan it says, quote, I will check my</p>	<p>1 the middle of litigation, may have bias or motives.</p> <p>2 I wanted to ask you in your clinical</p> <p>3 experience have you ever run across special needs</p> <p>4 trusts?</p> <p>5 MR. BULIOX: Objection, form, undefined as</p> <p>6 to what special needs trust is. Subject to that you</p> <p>7 can answer if you know.</p> <p>8 BY MS. VANCE:</p> <p>9 Q Do you know what a special needs trust is?</p> <p>10 A I believe I know, but I'm not sure. It sounds like</p> <p>11 a -- more of a legal concept.</p> <p>12 Q Well, it's a financial concept.</p> <p>13 A To me it's the same thing.</p> <p>14 Q Have you ever had clients who -- have you ever been</p> <p>15 paid out of a special needs trust for treating</p> <p>16 clients to your knowledge?</p> <p>17 A For treating clients, I honestly don't know about</p> <p>18 treating -- certainly for evaluating, but I'm not</p> <p>19 sure about treating.</p> <p>20 Q So you received payment from a special needs trust</p> <p>21 for performing an evaluation of a client?</p> <p>22 A Yes.</p> <p>23 Q And are you aware that trusts have trustees?</p> <p>24 A Yes.</p> <p>25 Q And is your thinking about Amy Jo Stevenson's motives</p>